

# Michael Latner transcript

**Lisa:** Hi, I'm Lisa Hernandez.

**Lizzy:** And I'm Lizzy Ghedi-Ehrlich.

**Lisa:** And we are your hosts for Scholar Strategy Network's No Jargon. Every other week, we will discuss an American policy problem with one of the nation's top researchers, without jargon.

**Lizzy:** We've got a real relevant one for folks today. I know that plenty of Americans who don't live in Texas or any of the other states in question have been following along with the national news about the Texas redistricting fight. Which is not even a normal redistricting fight, which is actually a thing that also happens all the time because boy, it's not just a politics of ideas where we elect people who we think will do a good job and help our lives.

There's also all this gamesmanship about just like what exactly your voters are, I guess. Redistricting and gerrymandering have both, at times, been described as a way for politicians to choose their voters as opposed to the other way around. And I'm definitely interested in hearing the background of how a system like this evolved, and it sounds like that's the conversation that you were able to have.

**Lisa:** Yeah. You know, amongst the Chronicles of Redistricting and the jerry-gary-mer-mandering that is happening everywhere. It was good to talk to an expert who can help me make sense of it, and hopefully will help the listeners make sense of everything. For this episode, I spoke to Professor Michael Latner, a political science professor at California Polytechnic State University, who is currently serving as a research director at Harvard Law School's Charles Hamilton Houston Institute for Race and Justice. His research focuses on how voting laws and district maps shape political representation. He is one of the authors of *Gerrymandering the States: Partisanship, Race, and the Transformation of American Federalism*.

Here's our conversation.

**Lisa:** Professor Latner, welcome to the podcast.

**Michael:** Thanks for having me.

**Lisa:** Thanks for being here. So, let's start with the sort of elevator pitch on what redistricting and gerrymandering are exactly for our listeners here, and then we can dive a little bit deeper into that.

**Michael:** Sure. That's a great starting point. First, let's talk a little bit about the difference between redistricting and gerrymandering. So redistricting is a process, right? And it's the process of delineating electoral district boundaries. So, wherever you have an electoral system that uses districts, then someone's gotta draw where those districts are, where the boundaries are, who's included, who's excluded.

And that process was first done in the U.S. after the first census. Indeed, the purpose of the census, its primary purpose, original purpose was the enumeration of the population so that seats could be allocated from the House of Representatives based on the population of states. It's not in the Constitution anywhere, but it is a fundamental feature of election administration since the founding of the Republic.

Since the Supreme Court made a series of decisions in the 1960s related to what we call malapportionment—that is putting different-sized populations into different districts. This is one of the primary ways that African-American voters were discriminated against and had their voting power diluted during Jim Crow. Since the 1960s, there has been a basic rule of population equality. That's where we get the term one person, one vote. And so we require equal populations between districts, for every redistricting cycle, which is typically done after the decennial census, so every 10 years. Congress has passed a number of statutes and apportionment statutes over time that have eventually evolved into what we commonly do now, which is we elect Congress and many, the vast majority of state legislatures, by single-seat districts. And so it's the drawing of single-seat districts that determines one, how many seats each state gets, and then how states carve up their geographies in order to render representation. So, that's kind of the process of redistricting.

Gerrymandering is the delineation of electoral districts in a specific way so as to advantage one group over another. And so, this is explicitly restricted by the Constitution, although the Supreme Court has not been clear about outlawing or restricting gerrymandering altogether. We still restrict gerrymandering for the purposes of racial discrimination. So racial vote dilution is still protected by the Voting Rights Act, at least the last time I looked as of today, because of its linkage to the equal protection clause of the 14th Amendment. Partisan gerrymandering, that is gerrymandering that is done to advantage one party over another, the Supreme Court in a case, known as *Rucho v. Common Cause*

decided that it is non-justiciable. That is that the court doesn't have the authority, that there's no standard to regulate partisan gerrymandering. And so racial gerrymandering is still currently outlawed. But there are lots of ways to carve districts so as to advantage others, both with regard to race, partisanship, as well as incumbent gerrymandering.

And so some of the plans that we have seen in state legislatures and congressional districts, basically protecting incumbents, and you saw some of that in the last redistricting cycle in Texas. Which is a state that we're going to talk about, I'm sure, where they didn't actually district to maximize their partisan advantage. They definitely did do some partisan gerrymandering, but you could also see through the redistricting process that they were protecting some Republican incumbents as well.

**Lisa:** Gotcha. So gerrymandering is sort of seems like redistricting, but with the primary purpose of making sure that one group is at an advantage over a different group. So, this term gerrymander, where does it come from? Is there any history behind it?

**Michael:** Yes, it's a uniquely American term, and it is derived from a politician named Elbridge Gerry. So, unfortunately for Elbridge, his name has been mispronounced historically, it's gonna be that way forever. Elbridge Gerry was the fifth vice president of the United States under James Madison. He was also governor of Massachusetts for a time. And during one of his tenures as governor, during the second census that was taken, the first redistricting, there was a specific district in Essex County in Massachusetts that was drawn in such a way that it sort of looked like a salamander. And a local Federalist newspaper—so it just is today, the Federalist and the Democratic Republicans were fighting each other in the media—and this Federalist newspaper mocked the shape of the salamander-looking district and referred to it as a gerrymander, and that's where we get the term. And apologies to Elbridge Gerry, but this is what we're stuck with.

**Lisa:** Some things just stick. Gif, jif, jerry, gerrymandering. So we'll continue to mispronounce his name for a long time, it seems.

**Michael:** That's exactly right.

**Lisa:** But, now that we have like a good understanding of gerrymandering in general, how does gerrymandering impact elections overall?

**Michael:** Well, it affects them in a number of ways. So first and foremost, it affects the voting power of individual voters, right? And that is true whether we're talking about an incumbent gerrymander or a racial gerrymander or a partisan gerrymander. The specific consequence or the effect of gerrymandering is to reduce or dilute the value of one group of voters over another group of voters, right?

And so, for example, with the reapportionment cases. You had districts drawn that had very unequal populations. And so, for example, you had large urban growing areas in many states in the country. And that's primarily where ethnic minorities, immigrants, people of color, lived in those growing areas. Whereas the more rural counties, those didn't grow as much. You know, back in particular, in the 1800s, but certainly through the Jim Crow era, the congressional districts, for example, might be based on counties within states, and they wouldn't change those boundaries at all. And so you'd end up with very small white populations that had just as much or more power than a much larger population, in let's say an urban county. And that is one way that you distort political power, right?

The other way that gerrymandering typically dilutes voting power is by, you can maintain equal populations in districts, but then you shift the populations geographically so as to either pack them into a district where their votes are wasted. Where, let's say, you've got a district that's 70%, 80% African American or Hispanic, and it's a heavily Democratic district, let's say. But those votes are getting wasted, right? Because you don't need more than 50% plus one to win a district. And so what the gerrymandering entity does, the coalition or the party, their goal is to spread their votes out more efficiently geographically, right? So that they're winning more districts by a slim margin while the other, their opposition, is wasting votes, or alternatively, they are cracked into multiple districts. So you might have, let's say, a Latino community in Los Angeles, right? Where you could easily have a majority Latino district, but let's say you wanted to dilute the votes of that community, you would split that geographic community into several districts so that they're only say, you know, 15% or 20% of the electorate and each of those districts, and they'll never have a chance to elect their candidate of choice.

That is how gerrymandering dilutes the votes of individuals.

**Lisa:** Now do both parties, are they taking sort of advantage of this gerrymandering situation equally? Is there a party that is usually more keen to like partaking in this gerrymandering?

**Michael:** It, it's a good question, and it changes with time. And so in the 1980s, in particular, post-1970s, we started paying a lot more attention to this because the Voting Rights Act of 1965 had been passed. The next census after that was 1970 and so that's where you get a lot of the voting rights litigation that starts to attack these distorted districts. And in the 1980s, it is generally agreed that Democrats, had a geographic advantage, that is their voters were spread more equitably across districts. And so, even a blind gerrymandering would end up advantaging Democratic politicians and the Democratic party because their votes were allocated more, more efficiently.

That started to change in in the nineties, and then certainly once we get into the 2000s. So the first book that, myself and my co-authors, Tony Smith, Tony McGann and Alex Keena wrote in 2016 was in response to the 2012 gerrymander. And by our records, that was about the third most extreme congressional gerrymander in the history of the country. And that was a function of the Republican party, one just being on the ball and really focusing their resources and strategies on controlling state legislatures in 2010 because it's the state legislatures that end up drawing the congressional districts. And so they were much better, they were more focused on controlling the process and they did a very effective job of gerrymandering themselves into power in both state legislatures and Congress.

And so in 2012, that election nationally saw Democrats get a majority of the national vote for Congress, but Republicans won a majority of seats and control over the House of Representatives. And since then, Republicans tend to have an advantage, again because Democrats are geographically more concentrated in urban areas. And so as you see the urban-rural split become a more relevant political cleavage in the country, that has historically disadvantaged Democrats.

But what we're starting to see now is that the polarization is actually extreme on both sides. So it used to be that Republicans would be more efficiently scattered across suburbs, for example, right. And then, the imbalance between Republicans and Democrats wasn't as severe in rural areas as it was in urban areas. But now we're starting to see both geographies, rural and urban, be more polarized. And that actually reduces the advantage that the Republican party has had over the last two decades. And so it's not clear that there's a distinct congressional advantage, for example, now, given that the change in polarization. In fact the Republican party probably should have picked up a few more seats in the last election compared to their vote share.

**Lisa:** Okay, so, physical boundaries are not directly, as aligned as they once were with like political party leniency and you've mentioned the census a few

times and how that pretty much affects redistricting. There's a lot of conversation about changes around the census, for the next time that we have it, whether that's soon or maybe at the 10-year mark that it usually is at. Do changes to the census affect redistricting and how?

**Michael:** Oh, absolutely. The data from the census is the raw material that we use to draw districts from, you know, school board and water districts at the local level up to the congressional level. And so the importance of that data and the capacity to distort that data for political purposes is something that we have to be very cautious about. I mean, the U.S. Census is the single most expensive thing that the government does besides going to war. So it is the largest scientific project that the government engages in. And it is an invaluable tool. I mean, in addition to the population enumeration, the data from the census is used for everything, from business fragmentation and studying labor statistics and all of the other statistics that the government relies on, usually have some origin or basis in census data. And so it's extremely important, and it's why, for example, in President Trump's first term, the attempt of his administration to change questions on the census, to change the way that the census is conducted, was fought and litigated in court. The administration lost those arguments because it was clear that they were trying to politicize the literal data collection and the scientific process to advantage them politically. And he was stopped from that in the first administration. You know, we'll see how things go this time around.

**Lisa:** Yeah, so there's other things in the news having to do with redistricting. You already alluded to Texas earlier. So, let's move to what's happening right now. We are recording this in the middle of August, and some states are in the middle of very heated redistricting fights right now. Could you walk us through what is going on in Texas and what the main political and legal disputes are there?

**Michael:** Yeah, absolutely. So, as your listeners may well know, the Republican party currently retains a very thin advantage in terms of seats, depending on who's alive and who's in DC at the time. We're talking about three or four seats. That's a very thin majority that maintains Republican control over the House of Representatives. So the Trump administration initiated this conversation to look for states where they might be able to gerrymander additional Republican seats so as to protect that majority and majority control over the House. Because, obviously, if in the 2026 elections the Democratic Party were to gain control of the House of Representatives, that would be very disruptive to the President's political agenda.

And so, without being asked, I think it's important to keep this in mind. Texas did not ask for this to happen. The Texas Republicans and the delegation, they were probably quite happy with their seats. This was initiated by the Trump administration. So it was an executive direction, to attempt to carve out five new seats in Texas, partially because, one, it's easy to redistrict in Texas. The state legislature completely controls the process. And in 2020, when the redistricting cycle was being done it was pretty clear that Texas did not maximize their partisan advantage. The Republican legislators there engaged in some incumbent protection, and so there was room to play. And, in addition to that, Latino support has increased for President Trump specifically.

And so the Republican party is looking at those Hispanic districts in Texas, and they believe that there's more Republican support that they can stretch out there. And so they're trying to maximize partisan advantage. Now in response to that, other states, including my home state of California have responded by urging that the Democratic party respond offensively and attempt to gerrymander districts where they control the process so as to counter this GOP attempt in Texas to add additional seats. And so certainly within California, if you look at the plan that the independent redistricting plan, it came outta that process in 2020. It's a pretty fair plan. There is certainly room for, again, I've certainly seen maps, that would erase five or more GOP seats from the congressional delegation. So it's definitely possible, and it looks like that may be moving forward now. As of yesterday, Governor Newsom did announce that he wants to hold a special election that would suspend the current congressional delegation and have a map. It's not exactly clear whether this will just be a two-year map or what that process still needs to be worked out, but you're seeing other states now jump into this process.

So on the Republican side, there are other opportunities in states like Ohio where, due to a GOP-engineered gerrymander, which was found unconstitutional in the Ohio State Court, but a federal appeal allowed them to basically use one of the gerrymandered maps because they were kicking the can down the road. They got so close to the election in 2022 and 24 that they used that gerrymandered map. Now they have to draw a new plan as per their commission's requirements. And so they may be able to eke out two or three additional GOP seats, if they're not restrained at all by the state court, which they're not anymore because it's a GOP-controlled state court. And so there are a number of other states that could be hopping into this, to the extent that we're, we're effectively engaging in a national arms race right now, a gerrymandering arms race for control of Congress.

**Lisa:** So fighting gerrymander with gerrymander, it seems. And are there any other solutions other than like when a party maybe is feeling like, oh, this is not advantageous to us, are there any other solutions to gerrymandering and like the problems around gerrymandering other than, I guess, fighting it with more gerrymandering?

**Michael:** Right. So there isn't a single party solution really within this context, and so there, there, really isn't an opportunity for one party to say, well, we're not gonna do gerrymander, we're gonna do plan B, right? There really is not a plan B in this case. We're already wedded to the single-seat district idea. Indeed, in 1967, Congress passed a law requiring that all congressional districts be single-seat districts. And so within this current context, there really is no way to sort of avoid going into the arms race, or at least giving up and paying the consequences. The real losers here, though, are of course the American people because this is a, it's a gross violation of the constitutional separation of powers. The Constitution clearly states that it is the people of the United States who are to determine the composition of the House. And that's not what's happening now, right? I mean, this is a real inversion of power where state legislatures are essentially determining the composition, and so there isn't really a partisan way out.

There is, however, a structural way out, and what we've seen in other countries where you have a political crisis, that is, where you have either the sort of partisan, extremism that we're seeing in terms of, you know, moving towards extra-constitutional ends to achieve political goals. Or you, you, just have a disaster where you've got, you know, one party collapsing and, and voter shifting support. And we're sort of in one of those moments, I would argue, that we are arguably in a moment of transition where we're looking at the future of the Voting Rights Act, the future of Congress. People are quite fed up with this process. And so when you look at survey data, nobody likes this, right? And that's true for both Republicans and Democrats. And so the silver lining here may be that it's getting so bad that we're finally ready to do something about it. And when we are there, there are solutions available.

**Lisa:** Okay. Well, speaking of folks doing something about it, I know that Louisiana has also been in the spotlight over creating a second majority Black Congressional district here, and the U.S. Supreme Court is scheduled to hear the case *Callais v. Louisiana* on October 15th. Could you explain this case and maybe how the similar situation is similar or different from what is happening in Texas?

**Michael:** Sure. It's a little bit of an unusual case in that it's actually the state of Louisiana, the GOP-controlled state of Louisiana, that is looking to retain the second district that they drew. And so that sounds odd because, through a series of lawsuits, what you had was the original 2020 redistricting resulted in one majority Black district. The state was sued over that map, and through the courts that eventually got up to the Supreme Court, the argument was that they may be violating the Voting Rights Act by not drawing a second district. The state of Louisiana was also looking at another case out of Alabama called Milligan. And in that case, the Supreme Court reaffirmed the state's need to draw a second African-American majority district. And so what the state legislature was doing in Louisiana was sort of seeing the writing on the wall. They were getting sued for this one seat. They were likely to lose this case if they were to keep on appealing. And so they drew a new map in accordance with court requirements, which it contained a second, majority Black district. They were then sued by a group of non-black voters after they updated the six congressional districts, and this group is now arguing that they were using race as the predominant factor in drawing that second district and that's unconstitutional.

And so what the Supreme Court is looking at now and what they're gonna hear arguments are now in October is whether or not the state legislature, they're now arguing that they drew the map not out of a predominance for considerations of race, but that they drew it for perfectly partisan reasons, right? Which the Supreme Court has already declared is non-justiciable. And so the actual, Julia Letlow, the House majority leader Steve Scalise, House Speaker Mike Johnson, right? All these Republicans who are from Louisiana, the state legislature arguing that they were redrawing the district so as to protect those incumbents. And so the question is this a racial gerrymander? Is this a partisan gerrymander? That's part of the question.

But the Supreme Court has now gone further to ask for additional information on whether section two of the Voting Rights Act, which is the, the, vehicle used to sue state legislatures, whether the question of drawing race conscious districts at all is constitutional and, and so the question that they're now asking is whether it is possible to draw a VRA district without using race as the predominant factor. And so the answer to that question really is the future of the Voting Rights Act, because if they answer no, then Section Two will be ruled unconstitutional. And we'll have to look at other ways of drawing districts. And so that's why this is such a pivotal case happening at the same time that this partisan gerrymandering war is really picking up.

**Lisa:** So looking ahead here, how could these new, gerrymandering wars reshape American politics in the years to come?

**Michael:** Oh, they already have. You know, one thing to keep in mind is when we talk about gerrymandering, we're often focused squarely on descriptive representation, right? So which party gets represented, which racial groups get represented, whose votes get diluted, but there are enormous policy consequences from gerrymandering. And so when you look, for example, prior to the COVID pandemic, the states that were gerrymandered, to the extent that a minority party who actually controlled the government as a result of gerrymandering, those states fared much worse in the pandemic. They did a worse job of responding to their constituents' needs. The mortality rates were higher. The effectiveness of sending out and providing health services was less robust. That's also true for extremely gerrymandered states with regard to the provision of basic health services, the expansion of Medicaid prior to the pandemic. And so there are life and death decisions that are the result of gerrymandering. And certainly, when we think about who controls Congress. I mean, imagine what 2026 to 2028 is going to look like and how different that would be depending on which party controls the House of Representatives.

**Lisa:** Yeah, absolutely. It sounds like a lot of changes are gonna be coming our way and affecting elections moving forward. I'm wondering a little bit more about solutions here. And definitely ways to address redistricting issues or gerrymandering. You've looked at the voting system itself and changes within it. Could things like proportional representation or rank choice voting help solve some of these problems?

**Michael:** I mean, yeah, and in directly so. So I would distinguish between proportional systems where the focus is really on what we call district magnitude, the number of seats per district, and increasing the number of seats per district allows smaller coalitions and groups to win seats. When you look at things like rank choice voting or cumulative voting or limited voting, these are changes in what I would call the ballot structure, right? Or, how voters express their preferences and how those votes are counted. Those are all semi-proportional systems, and they can certainly help, but the real effectiveness of really diluting the need to gerrymander or even the potential stakes in redistricting has to do with increasing the number of seats per district, right?

Let me just give you the clearest example. So if, in a hypothetical situation, we were to elect all 435 seats to the House of Representatives, through a national election, which of course we can't do because the Constitution allocates that power to states. But in a place like the Netherlands, right, that's exactly what

they do. So the whole Tweede Kamer, which is the second chamber in the Dutch government, the entire country is a single 150-seat district, right? So there are no district boundaries. And so therefore, there's no question of gerrymandering because there's no question of redistricting. And so we would never go that far. But you get the idea, right?

So if we move to statewide delegations, for example, in a place like Louisiana or Alabama, so you're talking about, you know, six or five or six, seven seats, they can all be allocated at the state level. There would be no need to district. And so gerrymandering literally ceases to be an issue. Even if we don't go that far, and we have multi-seat districts. So you could imagine, you know, a state like California, for example, is quite large, so you'd probably have a number of multi-seat districts, somewhere between five and 10 seats per district. Once you get up to that number, so like once you get over five, six seats per district, it is very difficult for electoral engineers to design partisan advantage into that system because one, elections are more fluid, they're more competitive.

And so you just have more fluidity in the outcomes, they're not as predictable, but you're also guaranteeing representation for the biggest parties, right? The majority and minority parties are both gonna get seats. And so it just lowers the stakes of the outcome and it's really just not worth it to invest in gerrymandering because there isn't that much of a payoff. Compared to now, where, you know, both parties in this last redistricting cycle were both preparing to go to war and had about \$150 million each in their war chest just for redistricting litigation, because they knew that this fight was coming.

**Lisa:** Wow. This seems to be a very uniquely American problem, so I appreciate you at least bringing other countries into perspective here, to know how they divide their electoral power there. I'm wondering if you have perfect vision or some kind of vision of your own of what a redistricting process would look like in the United States.

**Michael:** Oh, if I were king.

**Lisa:** Yes. If you were well king or president or both.

**Michael:** So we have a pretty good idea. Political science has done a pretty good job of showing us what works better than other things. And so we have a really good idea of what doesn't work right. What doesn't work is when you allow politicians to draw their own lines. You allow parties to control the process. Independent commissions have been proven to be better than state legislatures, but it's still a mixed bag. And certainly, looking at the examples of

Ohio and Virginia this last redistricting cycle, if you allow partisans to take over the process, you might as well be having the state legislatures do it.

So, independent commissions are, are a mixed bag in part because they're trying to do the impossible. They're trying to take politics out of the very political process of redistricting. I don't think that's actually attainable. And so I think it's better to have a process where all the partisan concerns are in the same room, and you're basically negotiating what is acceptable and what is fair.

And so there, there's an adage in decision theory, there's a process called "I divide, you decide," right? And, so there are ways to have parties and coalitions working together over the process of deciding where boundaries are going to go. And I think that something like that is a better process.

The California Redistricting Commission, for example, has a pretty deliberative process, so the commission is charged with going around the state. They hold a bunch of meetings, they have people propose maps and propose boundaries where their communities of interest are. And I think that sort of bottom-up process that actually involves citizens in the redistricting process is a much fairer and, frankly, more robust way to think about drawing congressional and other district boundaries.

And I would say for the long run, right, if we're able to institute some of these structural reforms, proportional multi-seat districts and the like, it's gonna be very important that the public be involved in that process. Because once those boundaries are set, then they basically just can change with regard to population over the census. They should reflect the counties and cities that are, you know, underneath congressional districts, for example, you wanna minimize splitting of political sub-units. And we could have a much more stable and robust system and stop putting so much time and so many resources into this effort that most countries look at and find it ridiculous, frankly.

**Lisa:** Mm-hmm. Well, thank you for sharing, especially with the I divide, you decide theory. I definitely, I asked, you answered. So thank you so much. You know, I really appreciate you bringing us into this sort of redistricting war that you have been mentioning here. I think as a lot of people are hearing a lot about what gerrymandering means, what is happening in different states. Even in the states where they're living; I live in Florida, I know some redistricting is probably coming my way at some point. So I appreciate you bringing me into this space and arming us with that knowledge, as we gear up for probably more existing fights to come. So we appreciate your time and expertise, Professor Latner, and thanks for being on No Jargon.

**Michael:** Well, thanks so much. I really appreciate the opportunity.

**Lisa:** And thanks for listening. For more on Professor Latner's work, check out our show notes at [scholars.org/nojargon](https://scholars.org/nojargon). No Jargon is the podcast of the Scholars Strategy Network, a nationwide organization that connects journalists, policymakers, and civic leaders with America's top researchers to improve policy and strengthen democracy.

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